Randall Rents of Indiana and Randall Industries, a Single Employer *and* International Union of Operating Engineers, Local 150, AFL–CIO, Petitioner 1 *and* Production Workers Union of Chicago and Vicinity, Local 707, N.P.W.U., Petitioner 2. Cases 13–RC–19777, 13–RC–19825, and 13–RC–19828

March 12, 1999

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FOX, LIEBMAN, AND BRAME

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 29, 1998, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 1 for Petitioner 1 (Local 150), 8 for Petitioner 2 (Local 707), and 0 against participating labor organizations, with 7 challenged ballots.[1]

The Board has reviewed the record in light of the exceptions[2] and briefs, and, for the reasons set forth below, has decided to adopt the hearing officer's findings[3] and recommendations[4] only to the extent consistent with this decision.

We adopt the hearing officer's recommendation to overrule Local 150's Objections 1, 2, 8, 18, 19, and 20. Contrary to the hearing officer's recommendation, however, we also overrule Local 150's Objections 9 and 10, and thus we shall certify Local 707.

The hearing officer recommended sustaining Local 150's Objections 9 and 10 as they related to the Employer's promise and grant of additional benefits to employees during the critical period based on evidence concerning the issuance of a larger than usual bonus to bargaining unit employees at the Employer's Elmhurst facility 1 month before the election. In this regard, the hearing officer found that prior to 1998, the Elmhurst employees received a small cash bonus around Christmas[5] and a bonus check in the beginning of the year based on the Employer's profitability during the previous year (profit-based bonuses). The Employer issued profit-based bonuses if it made a profit in the preceding year. The last such bonus, prior to the critical period,[6] issued in January 1996 for the 1995 calendar year. The employees were notified of the amount of their profit-based bonus at the end of 1995, through a document enclosed in the Christmas cards that also contained their cash bonus.

In mid-March 1998, the Elmhurst employees received their profit-based bonuses for calendar year 1997. Randy Truckenbrodt, the Employer's president, explained that profit-based bonuses were typically issued to employees anytime from December 20 of the year that the Employer made the profit to as late as mid-March of the following year; he testified that there was an effort to pay the profit-based bonuses during January of the following year, but that he could not "swear" that this happened all the time. He explained that the payment of the bonuses for the Elmhurst employees was delayed until March 1998 because the Employer started 1997 with a "pretty significant loss." Truckenbrodt further testified that the 1998 bonus pool was the largest bonus pool in the Employer's history. The three Elmhurst employees who received bonuses in both 1996 and 1998 received at least almost twice the amount in 1998 that they received in 1996.[7]

The hearing officer found that although the Employer admitted that the 1998 bonus pool was the largest in its history, it produced no evidence to show that its 1997 profits were the largest in its history, nor did it explain why it issued substantially larger bonuses to the Elmhurst employees than they received in 1996. The hearing officer further found that the Employer failed to adequately explain why it had to delay the issuance of the bonuses to the Elmhurst employees until March 1998. The hearing officer did not credit the Employer's explanation that the reason the Elmhurst employees received their bonuses in March 1998 was that it was more difficult to calculate the bonuses for the Elmhurst facility because of a financial loss that facility experienced in the first part of 1997. The hearing officer noted that the Employer failed to produce any documents to show that such a loss occurred or that the recovery from the loss was so substantial that it justified issuing the large bonuses that the employees received. Thus, the hearing officer found that the Employer failed to provide an adequate explanation for delaying the issuance of the bonuses to the Elmhurst employees until March 1998 or for issuing substantially larger bonuses to them. He, therefore, concluded that the pending election influenced the Employer in both the timing and the amount of the bonuses. Accordingly, the hearing officer recommended sustaining Objections 9

[1] Subsequent to the election, the Regional Director for Region 13 issued a Report on Challenged Ballots and Objections and Notice of Hearing, in which he recommended sustaining four of the challenges, thus rendering the remaining three challenges not determinative.

[2] We deny the Employer's motion to strike Local 150's exceptions in their entirety.

[3] Local 150 and the Employer have excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.,* 118 NLRB 1359, 1361 (1987). We find no basis for reversing the findings.

[4] In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule Local 150's Objections 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16, and 17.

[5] Typically this cash bonus ranged from $25 to $100.

[6] The critical period began on November 25, 1997, with the filing of an election petition by Local 150. Election petitions were also filed by Local 707 on February 3 and 5, 1998.

[7] One such employee received $300 in 1996 and $1200 in 1998; another such employee received $500 in 1996 and $800 in 1998; and the other such employee received $200 in 1996 and $700 in 1998.

and 10 solely as they related to the issuance of the bonuses, and thus he recommended setting aside the election.

The Employer excepts to the hearing officer's recommendation to sustain Objections 9 and 10, contending, inter alia, that the Employer's issuance of a profit-based bonus to the Elmhurst bargaining unit employees in mid-March 1998 neither interfered with the employees' free choice to organize nor affected the outcome of the election, where the employees voted overwhelmingly in favor of Local 707.

We find merit in the Employer's exception. It is well-established Board law that in an election involving two competing unions in which one union has won the election decisively, the election will not be set aside because of employer conduct equally affecting both unions. *Showell Poultry Co.,* 105 NLRB 580 (1953); *Nestle Co*., 248 NLRB 732, 741 (1980), enfd. mem. 659 F.2d 252 (D.C. Cir. 1981). For example, in *Flat River Glass Co*., 234 NLRB 1307 (1978), the Board declined to set aside an election in a situation where the employer had maintained an invalid no-solicitation rule but there was no evidence indicating preferential treatment by the employer between the two participating unions. In that case, the Board stated:

> In *Showell Poultry Company*, 105 NLRB 580 (1953), the Board overruled an objection to an election involving two unions in which the employer made a putatively coercive speech opposing both unions. The Board explained in *Packerland Packing Company*, *Inc.,* 185 NLRB 653 (1970), citing *Showell*, that where one of two competing unions has won an election decisively it will not be set aside because of employer conduct equally affecting both. Cf. *Marvin Neiman, d/b/a Concourse Nursing Home,* 230 NLRB 916 (1977). [Id.]

This rule of *Showell Poultry* applies here, because even assuming that the Employer engaged in otherwise objectionable conduct by its issuance of the mid-March 1998 bonuses to Elmhurst employees, there is no evidence that this conduct affected Local 150 any differently than it did Local 707; rather, the conduct alleged to be objectionable here equally affected both unions. In this regard, we have adopted the hearing officer's recommendation to overrule Local 150's Objection 18, which alleged that the Employer unlawfully dominated or supported Local 707 to discourage employees' choice of Local 150.[8]

Thus, contrary to the hearing officer's recommendation, we shall overrule Local 150's Objections 9 and 10. Accordingly, we overrule the hearing officer's recommendation to set aside the election, and we shall certify Local 707 as the collective-bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Production Workers Union of Chicago and Vicinity, Local 707, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time laborers, operators, mechanics, drivers, yardmen and repairmen employed by the Employer at its facilities currently located at 6480 Highway 20, Portage, Indiana and 741 South Route 83, Elmhurst, Illinois; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

[8] In so concluding, the hearing officer found, inter alia, that the Employer did not express an opinion as to whether Local 707 was better than Local 150.